

**RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:**

City of Santa Clara  
City Hall  
1500 Warburton Avenue  
Santa Clara, California 95050

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**FIRST AMENDMENT TO DEVELOPMENT AGREEMENT**

BETWEEN

THE CITY OF SANTA CLARA,  
a chartered California municipal corporation,

and

TOD BROKAW, LLC,  
a California limited liability company

## **FIRST AMENDMENT TO DEVELOPMENT AGREEMENT**

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT (“**Amendment**”) is dated for reference purposes as of \_\_\_\_\_, 2020, and is made by and between THE CITY OF SANTA CLARA (“**City**”), a chartered California municipal corporation, and TOD BROKAW, LLC, a California limited liability company (“**Developer**”).

### **Recitals**

- A. Developer and the City are parties to that certain Development Agreement effective September 26, 2019 and recorded on October 9, 2019 as document number 24300322 in the Official Records of Santa Clara County (the “Original Agreement” or “Original Development Agreement”).
- B. Concurrently with the submission of its Development Agreement application, Developer submitted applications to develop the subject property with a transit-oriented mixed use development consisting of up to 1,565 residential dwelling units and up to 197,000 square feet of hotel and retail uses (the "Project").
- C. The Original Development Agreement contemplated that the Project would be developed in several phases which are outlined in more detail in the Development Plan and the Conditions of Approval, as those terms are defined in the Original Development Agreement. Commencement of hotel construction was required during phase one of the Project, and Developer agreed that no building permit may be issued for the construction of the second residential building in phase one unless and until a building permit was first issued for the hotel and construction activities started on the hotel, per Sections 2.7 and 2.8 of the Original Development Agreement.

- D. As a result the global pandemic's effects on the hotel industry, the Original Agreement's current requirements regarding timing of the Project's hotel became infeasible.
- E. Allowing the Project to proceed under revised phasing would benefit the City in several ways, including: earlier development of 725 residential units, including 73 Below Market Rate units; creating nearly 20,000 square feet of new retail space, including a 7,500 square foot lease for the Police Activities League located in building 2 that would have been delayed under the Original Agreement; approximately \$35 million in impact fees payable for phase one; construction of a two-acre Public Park, Brokaw Road improvements, and increased VTA ridership.
- F. Sections 11.1 and 11.2 of the Original Development Agreement provide that City and Developer may modify the terms of the Original Agreement pursuant to Government Code section 65858 and City Code section 17.10.300, and the parties intend to do so by this Amendment.
- G. On June 10, 2020, City's Planning Commission held a duly noticed public hearing on this Amendment and: (i) determined that consideration of this Amendment complies in all respects with CEQA; (ii) determined that this Amendment is consistent with the City's General Plan; and (iii) recommended that the City Council approve this Amendment.
- H. On \_\_\_\_\_, the City Council held a duly noticed public hearing on this Amendment and determined that consideration of this Amendment complies in all respects with CEQA; found this Amendment to be consistent with the City's General Plan; and introduced Ordinance No. \_\_\_\_\_, approving this Amendment.

I. On \_\_\_\_\_, the City Council adopted Ordinance No. \_\_\_\_\_, enacting this Amendment and the Ordinance became effective thirty (30) days later on \_\_\_\_\_, (“Effective Date”).

**NOW, THEREFORE**, pursuant to the authority contained in Section 65864 et seq., of the California Government Code and The Code of the City of Santa Clara, California (“SCCC”) Section 17.10.010 et seq., and in consideration of the mutual covenants and promises of the parties, the Parties agree as follows:

**1. Development of the Property**

City and Developer agree that, notwithstanding anything to the contrary in the Original Agreement, sections 2.7 and 2.8 of the Original Agreement are hereby amended as follows:

(a) **“2.7 Timing of Improvements.** Developer may implement the Development Plan in phases, as described herein or as outlined in the Development Plan, or as otherwise approved by the City. The phasing set forth in the Development Plan is the approved phasing as of the Effective Date. As set forth in Section 2.8, commencement of the hotel construction is required prior to phase two of the Project. With the exception of the hotel construction schedule of Section 2.8, Developer may request alternate phasing in writing based on business constraints or considerations. Prior to implementation, such alternate phasing must be approved in writing by the City Council, whose approval shall not be unreasonably withheld taking into consideration whether the terms and conditions of this Agreement, the Development Plan, the Conditions of Approval and the Mitigation Monitoring and Reporting Program are met, that the revised phasing will not unduly burden, hamper or constrain prior or future phases of the Project, and that the revised phasing will not modify the hotel construction schedule specified in Section 2.8. It is the

Parties' specific intent that this Agreement shall prevail over any later-adopted initiative or moratorium that might otherwise have the effect of restricting or limiting the timing of development of the Project and that Developer shall have the right to develop the Project at such time as Developer deems appropriate within the exercise of its subjective business judgment and no annual (or other) limit, moratoria, or other limitation upon the number of, or phasing or pacing of, buildings which may be constructed, or Building Permits which may be obtained, or the like shall apply to the Project.”

(b) “**2.8 Timing of Hotel Construction.** The Developer agrees to begin construction of the hotel ~~during~~ prior to phase two ~~one~~ of the Project. In order to facilitate this requirement, the Developer agrees that no building permit shall be issued for the construction of the ~~second~~ first residential building in phase ~~one~~ two, unless and until a building permit has first been issued for the hotel and construction activities started on the hotel. For the purposes of this requirement the term "construction activities started" is satisfied by commencement of foundation work.”

## **2. Counterparts; Facsimile Signatures.**

This Amendment may be executed in counterparts, each of which shall be deemed an original and which together shall constitute one instrument. The signatures of any party or parties on this Amendment transmitted by facsimile shall be deemed the same as an original signature and shall be binding on the party transmitting the same.

## **3. Modification.**

Except as modified above the terms and conditions of the Development Agreement shall remain unmodified and in full force and effect. In the event of any conflict or inconsistency between the

terms of this Amendment and the terms of the Original Development Agreement, the terms of this Amendment shall control.

**CITY OF SANTA CLARA, CALIFORNIA,  
a chartered California municipal corporation**

APPROVED AS TO FORM:

\_\_\_\_\_  
BRIAN DOYLE  
City Attorney

ATTEST:

\_\_\_\_\_  
NORA PIMENTEL, MMC  
Assistant City Clerk

\_\_\_\_\_  
DEANNA J. SANTANA  
City Manager  
1500 Warburton Avenue  
Santa Clara, CA 95050  
Telephone: (408) 615-2210  
Fax: (408) 241-6771

“CITY”

**TOD BROKAW, LLC  
a California limited liability company**

**TOD Brokaw, LLC**  
A California limited liability company

By: H/S Brokaw, LLC,  
A California limited liability company  
Its: Manager

By: \_\_\_\_\_  
Name: Derek K. Hunter, Jr.  
Its: Manager

By: \_\_\_\_\_  
Name: Edward D. Storm  
ITS: MANAGER